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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1977

No. 77-1201

ZEIGLER COAL COMPANY,
Petitioner,

v.

LOCAL UNION NO. 1870, UNITED MINE WORKERS OF AMERICA and LOCAL UNION NO. 8682, UNITED MINE WORKERS OF AMERICA,
Respondents.

BRIEF OF RESPONDENTS OPPOSING PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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Respondents, Local Union No. 1870, United Mine Workers of America and Local Union 8682, United Mine Workers of America, respectfully pray that the Petition for a Writ of Certiorari to review the judgment of the United States Court of Appeals for the Seventh Circuit entered in this case on December 1, 1977 be denied.

QUESTION PRESENTED

Whether the District Court and Court of Appeals for the Seventh Circuit erred in finding that a sympathy strike engaged in by Local Unions 1870 and 8682, United Mine Workers of

America, precipitated by the honoring of a stranger picket line, was not 'over an arbitrable dispute' and therefore not a violation of a pre-existing preliminary injunction enjoining strikes over 'arbitrable disputes' and in refusing to hold those Local Unions in contempt of that order.

STATUTES INVOLVED

This case involves the Norris-LaGuardia Act, 29 USC §101 et seq. and Section 301 of the Labor Management Relations Act, 29 USC Section 185(a).

STATEMENT OF THE CASE

Petitioner, Zeigler Coal Company, originally brought this action under Section 301 of the Labor Management Relations Act, as amended, 29 USC Section 185. That action was commenced because of a work stoppage which took place in 1975 over an issue which involved the right of Petitioner to maintain "shift rotation." After a hearing on the preliminary injunction, an order was issued in the District Court which enjoined Respondents, Local Unions 1870 and 8682, United Mine Workers of America, from engaging in any strike because of "any dispute, disagreement or local trouble of any kind which is required to be settled through the grievance and arbitration provisions or other procedures of the 1974 National Bituminous Coal Wage Agreement . . ."

When a subsequent work stoppage began on or about July 30, 1976, Petitioner filed a motion to punish the Local Unions for contempt of that order which motion stated in part as follows:

> "The work stoppage now in progress at plaintiff's mines was initiated by picketers belonging to another U.M.W.A. Local Union located at Keensburg in Wabash County, Illinois, which lies within the Eastern Judicial District of Illinois. Two such picketers appeared at both the Zeigler No. 5 and Murdock Mines at or about 11:00 p.m., July 29, 1976, and leafleted plaintiff's employees who were arriving in preparation for the midnight shift. Since then, no work has occurred, . . ." (A.23)

Petitioner neither alleged nor proved any other cause for the work stoppage which was the subject of this action for contempt. After a hearing, the District Court found the local unions had engaged in a sympathy strike as a supposed demonstration of union solidarity and that the walkout was not "over any dispute between the Union and the employer that was even remotely subject to the arbitration provisions of the contract" citing the recent decision of the United States Supreme Court in *Buffalo Forge Company v. United Steelworkers of America, A.F.L./C.I.O.*, 428 U.S. 397 (1976). Since the Court found that there was no arbitrable dispute underlying the work stoppage, there could be no violation of the existing injunction which had been fashioned in accordance with *Boys Markets, Inc. v. Retail Clerks Union*, 398 U.S. 235 (1970), and the motion for contempt was denied. This order was affirmed by the Seventh Circuit Court of Appeals.

ARGUMENT

The Decision of the District Court Affirmed by the Court of Appeals for the Seventh Circuit Denying Petitioner's Motion to Hold the Local Unions in Contempt Was Proper Because a Sympathy Strike or Work Stoppage Resulting From the Honoring of Picket Line Was Not a Strike Over an Issue Which Was Subject to the Grievance and Arbitration Procedure of the National Bituminous Coal Wage Agreement of 1974 and That Decision Is Consistent With the Supreme Court's Decision in Buffalo Forge v. United Steel Workers That Sympathy Strikes Are Not Enjoinable in an Implied-No-Strike Context.

In its recent landmark decision in *Buffalo Forge Co. v. United Steel Workers of America*, 428 U.S. 397 (1976), the United States Supreme Court considered an arbitration clause almost identical to that contained in the 1974 National Bituminous Coal Wage Agreement which is at issue in this case, and determined that a sympathy strike, that is, one resulting from the honoring of a sister local union's picket line, did not give rise to a dispute arbitrable under that clause and therefore was not enjoinable under *Boys Markets v. Retail Clerks*, 398 U.S. 235 (1970) and Section 301 of the Labor Management Relations Act. The Court reaffirmed the vitality of the anti-injunction provisions of the Norris-LaGuardia Act, 29 U.S.C. Section 101 et seq. and countermanded the broad scope which several circuits had given to the *Boys Markets* decision to the effect that a sympathy strike "over an arbitrable issue". To that issue, the Court specifically stated:

> *To the extent that the Court of Appeals, 517 F.2d, at 1211, and other Courts,* Island Creek Coal Co. v. United Mine Workers, 507 F.2d 650, 653-654 (CA 3), cert. denied, 423 U.S. 877 (1975); Armco Steel Corp. v. United Mine Workers, 505 F.2d 1129, 1132-1133 (CA 4 1974),

> cert denied, 423 U.S. 877 (1975); Amstar Corp. v. Amalgamated Meat Cutters, 468 F.2d 1372, 1373 (CA 5 1972); *Inland Steel Co. v. Local Union No. 1545, U.M.W., 505 F.2d 293, 299-300 (CA 7 1974), have assumed that a mandatory arbitration clause implies a commitment not to engage in sympathy strikes, they are wrong.* (*Buffalo Forge*, at p. 407, n. 10).

Of equal significance, even the four dissenting Justices agreed that "an implied no strike clause does not extend to sympathy strikes." *Buffalo Forge*, at 410, n. 17 (dissent). Thus, all members of the Court agreed that an implied no strike duty, such as that contained in the contract involved in this case, is no basis for injunctive restraint of sympathy strikes.

In affirming the District Court and the United States Court of Appeals for the Second Circuit which had refused to issue an injunction, the Court stated as follows:

> *Boys Markets* plainly does not control this case. The District Court found, and it is not now disputed, that the strike was not over any dispute between the Union and the employer that was even remotely subject to the arbitration provision of the contract. The strike at issue was a sympathy strike in support of sister unions negotiating with the employer; neither it's causes nor the issue underlying it were subject to the settlement procedures provided by the Contract between the employer and respondents. The strike had neither the purpose nor the effect of denying or evading an obligation to arbitrate or of depriving the employer of his bargain. Thus, *had the Contract not contained a no strike clause or had the clause expressly excluded sympathy strikes, there would have been no possible basis for implying from the existence of an arbitration clause a promise not to strike that could have been violated by the sympathy strike in this case.* (*Gateway Coal Co. v.*

Mine Workers, supra, at 382). (Emphasis added.) 428 U.S. at 406

There was not an express no strike clause or exclusion of sympathy strikes in the National Bituminous Coal Wage Agreement of 1974 which was in effect between the parties to this action. The only duty not to strike is an implied obligation not to strike over disputes subject to the arbitration agreement. *Gateway Coal Co. v. United Mine Workers*, 414 U.S. 368 (1974), *Old Ben Coal Corp. v. Local Union 1487, United Mine Workers of America*, 457 F.2d 162 (7th Cir. 1972).

The arbitration clause considered by the Court in *Buffalo Forge* was virtually identical to that contained in the contract in this case. Petitioner's imaginative effort to convert a sympathy strike or a work stoppage resulting from the honoring of a picket line into a strike over an arbitrable dispute in violation of the collective bargaining agreement must fail in light of the Supreme Court's recent decision which has settled this specific issue. In the absence of an allegation of a dispute at Respondent's mines which was subject to the grievance and arbitration procedure, the denial of the Motion to Punish for Contempt was properly affirmed by the Court of Appeals just as a request for injunctive relief in the first instance over such activity would have to have been denied because the complaint would simply have failed to state a cause of action under Section 301 of the Labor Management Relations Act.

Petitioner's assertion that the sympathy strike in this case is distinguishable from *Buffalo Forge* must be rejected as it was in *Southern Ohio Coal Company v. United Mine Workers of America, et al.*, 551 F.2d 695 (6th Cir. 1977), cert. den. 434 U.S. — (1977) which involved suits for injunctive relief arising out of stranger picketing similar to the present case. In that case the Court of Appeals for the Sixth Circuit stated:

> "The Company attempts to distinguish the sympathy strike in *Buffalo Forge* from the refusal to cross in this case by

contending that in *Buffalo Forge* the primary pickets and the sympathy strikers were members of different bargaining units, whereas in this case the stranger pickets and the local miners are all members of the same bargaining unit working under a single national contract. Thus, the employer reasons, the membership of the local unions stands to benefit from resolution of the primary strike favorable to the mineworkers. Just why this is so the Company does not elaborate. By claiming that the local miners have adopted the goals of the illegal strike, without being explicit as to their nature, the Company is asking this Court to conclude that this is not really a refusal-to-cross situation but a case where the locals have joined an illegal primary strike over arbitrable issues—a paradigm case for a *Boys Markets* injunction. This we decline to do. The Bituminous Coal Wage Agreement provides that local disputes be grieved and arbitrated on a mine-by-mine basis. The only benefit to be derived by the local unions from favorable settlement of the West Virginia strike is indirect, at best, and highly speculative. Accordingly, the bare assertion that all mine workers are members of the same bargaining unit and working under a national contract adds little to the central inquiry in *Boys Markets* case—whether the employees sought to be enjoined are striking over issues which they have agreed to arbitrate. We cannot conclude on the present state of the record that the locals' refusal to cross the stranger picket lines amounted to ratification of and active participation in an illegal strike. (See Slip Opinion at p. 12, 13)."

In like manner, that Court also rejected the contention of the plaintiff that is also made in this case that the legality or illegality of the primary picketing is a valid basis for distinguishing *Buffalo Forge*.

> "Nor do we believe that the legality or illegality of the primary picketing is a valid basis for distinguishing *Buffalo Forge*. The Company contends that a court must issue

an injunction against a union which refuses to cross an illegal picket line or else it sanctions open support of illegal conduct. The Company claims it would be anomalous to regard a secondary strike as non-enjoinable when it is in support of a primary strike which is illegal, and hence enjoinable. The glaring defect in this argument is that it improperly shifts the focus of the court's inquiry from the employees against whom the injunction is sought to the illegal pickets. Not only does this raise problems of proof because the initial strikers will often not be parties to the action, but it also places the burden of making complex judgments as to the legality of the primary line on the employees faced with the decision whether or not to cross. If they refuse to cross, they run the risk of injunction, damages and civil contempt. Both *Boys Markets* and *Buffalo Forge* teach quite explicitly that the proper focus of judicial attention is a Section 301(a) injunctive action should be on the employees sought to be enjoined. The "narrow exception" to the Norris-LaGuardia Act perceived in *Boys Markets* may only be invoked where the union defending the action has struck "over a grievance which both parties are contractually bound to arbitrate." 398 U.S. at 254. As the Supreme Court reiterated in *Buffalo Forge*, 'there is no general federal anti-strike policy'. 44 U.S.L.W. at 5350, citing *Sinclair Refining Co. v. Atkinson*, 370 U.S. at 225 (Brennan, Jr., dissenting). It is only when an injunction is required to vindicate the contractual arbitration process that the anti-injunction policy of the Norris-LaGuardia Act will be accommodated to satisfy the public policy favoring peaceful settlement of labor disputes through arbitration. *Boys Markets, Inc. v. Retail Clerks Union*, 398 U.S. at 253. The key to issuance of a *Boys Markets* injunction is a finding that the issue underlying the work stoppage is arbitrable. In this case however, the District Court found that there was "no arbitrable grievance underlying the work stoppage", but

rather the work stoppage resulted from the miners' reluctance to cross the stranger picketlines. Thus, as in *Buffalo Forge*, whether motivated by sympathy or fear of reprisal, the work stoppage was not caused by an arbitrable dispute between the mine workers and the employer. The strike had "neither the purpose or the effect of denying the employer of his bargain." *Buffalo Forge Co. v. United Steelworkers of America*, 44 U.S.L.W. at 5349. *Accord, U.S. Steel Corp. v. United Mine Workers*, 418 F.Supp. 172, 174-175 (W.D. Pa. 1976) aff'd — F.2d— (3d Cir. Dec. 20, 1976). See also *Plain Dealer Publishing Co. v. Cleveland Typo. Union No. 53*, 520 F.2d 1220 (6th Cir. 1975). The legality of the primary picketing is irrelevant.

That Court went on to speak directly to the application of *Buffalo Forge* to the 1974 National Bituminous Coal Wage Agreement.

> "The Bituminous Coal Wage Agreement of 1974 does not contain an express no-strike clause so the issue of the union's right to refuse to cross a picketline is not even arguably arbitrable. Since the unions' refusal to cross the stranger picketlines did not involve an arbitrable dispute between the employer and its employees, it is non-enjoinable, see *Buffalo Forge Co. v. Retail Clerks Union*, 44 U.S.L.W. at 5355 n. 20 (dissent), and therefore cannot provide a basis for contempt citations. See *United States Steel Corp. v. United Mine Workers of America*, 519 F.2d 1236, 1249 (5th Cir. 1976).

The United States Court of Appeals for the Third Circuit has also recently had an opportunity to reconsider its position on the sympathy strike question in light of *Buffalo Forge* as it relates to the 1974 National Bituminous Coal Wage Agreement in *United States Steel Corporation v. United Mine Workers of America, et al.*, 548 F.2d 67 (3d Cir., 1977). The Third Cir-

cuit had previously ascribed in *Island Creek Coal Company v. U.M.W.*, 507 F.2d 650 (3rd Cir. 1974) to the same rationale as that previously adopted by the 7th Circuit in *Inland Steel*. Stating its belief that the Supreme Court's decision in *Buffalo Forge* "undercuts the vitality of *Island Creek*, that court reversed a judgment on a jury verdict in favor of the plaintiff/employer for money damages for a strike resulting from the refusal of the union members to cross a stranger picket line on the basis that such a strike was not "over any dispute between the union and the employer that was subject to arbitration."

In another unique attempt to avoid the specific language of *Buffalo Forge*, Petitioner would have this Court develop a separate body of Federal Labor Law applicable to the coal industry on the theory that a dispute at any U.M.W.A. mine is a dispute at all U.M.W.A. mines and erroneously represents to the Court that all U.M.W.A. mines are members of a single bargaining unit. This novel argument conveniently overlooks the law and reality of appropriate bargaining units and the plain wording of the 1974 contract.

It has been established by numerous courts that the district and local unions affiliated with the International Union, United Mine Workers of America are self governing autonomous organizations. See *Hodgson and Trbovich v. United Mine Workers of America*, 344 F. Supp. 990, 475 F. 2d 1293 (C.A.D.C. 1973); *Monborne et al. v. U.M.W.A., et al.*, 353 F. Supp. 255 and *Cross et al. v. U.M.W.A., et al.* (353 F. Supp. 504) (S.D. Ill. 1973).

The employees at each mine of each employer are represented by a separate local union, each with their own officers. Each local union has a separate seniority system, separate books and records, separate meeting halls, separate union funds, and, perhaps most importantly, for the most part, separate employers as in the present case.

Moreover, it is well established that arbitration is a matter of contract and a party cannot be required to submit to arbitration any dispute which he has not agreed to submit. *United Steelworkers of America v. Warrior & Gulf Navigation Co.*, 363 U.S. 574 (1960). In fact the United States Court of Appeals for the Fourth Circuit recently ruled in *Consolidation Coal Co. v. United Mine Workers of America*, 537 F.2d 1226 (4th Cir. 1976), that the contract limits the scope of the grievance procedure to a single mine site and that the United Mine Workers have never agreed to arbitrate grievances arising at other mines.

> It is true, of course, that such a contract could be worded so as to control conduct by other locals and other members not employed by an employer, but that is a matter of agreement between the parties, and it is clear that this contract does not go so far.

Such a right would be dependent upon recognition in the contract and a grievance mechanism created by contract to resolve such disputes. There is no such right against foreing locals and no such grievance in the 1974 National Bituminous Coal Wage Agreement. This conclusion is unsupported by contractual language contained in the Settlement of Disputes provision of the Agreement, Article XXIII Section (a) provides:

> "A committee consisting of at least three (3) employees shall be elected at each mine by the employees at such mine. Each member of the mine committee shall be an employee of the mine at which he is a committee member, and shall be eligible to serve as a committee member only so long as he continues to be an employee of such mine. The duties of the mine committee shall be confined to the adjustment of disputes arising out of this agreement that the mine management and the employee or employees fail to adjust. The mine committee shall have no other authority or exercise any

other control nor in any way interfere with the operation of *the* mine for violation of this section any and all members of the committee may be removed from the committee."

Article XXIII, Section (c) provides that the mine committee and employer use the grievance procedure to resolve only "local trouble of any kind . . . at *the* mine", and Article XXIII Section (c)(4) provides that the decision of the panel arbitrator disposing of such disputes "shall govern only the dispute before him." Thus the language of the grievance procedure demonstrates that it is applicable only to grievances arising at the mine since grievances arising at other mines have not been included in that process and the party cannot be required to submit to arbitration any dispute which he has not agreed to submit. *United Steelworkers of America v. Warrior & Gulf Navigation Co.* supra. See also, *Fabijanic v. Sperry Gyroscope Division*, 370 F. Supp. 62 (1974) and *Local 464, American Bakery & Confectioners Workers International Union v. Hershey Chocolate Corporation*, 310 F.Supp. 1182, aff'd per curiam 433 F.2d 926 (3rd Cir. 1970) in which Court refused to compel arbitration between the company and union which represented employees at a separate unit or subdivision of the common parent employer because there was no contract between them requiring arbitration.

Although Petitioner claims that Respondents had an interest in the resolution or outcome of the dispute in West Virginia where the dispute originated, it is not explained what the dispute was, how Respondent had an interest, how Petitioner could have been compelled to accede to the union demand, and, therefore, how Petitioner was deprived of its bargain to arbitrate disputes between it and its employees.

It is clear, therefore, that the issue of the enjoinability of sympathy strikes in this context has been settled by this Court in the

Buffalo Forge decision and that the Court's judgment as affirmed by the Seventh Circuit Court of Appeals is consistent with that decision. It is equally clear that the decision of the Seventh Circuit Court of Appeals is not in conflict with other courts of appeals on this same matter. Petitioner's representation that courts of appeals have taken widely divergent positions on this issue in the coal industry (Petitioner's Brief, page 12) is erroneous and misleading.

The Court of Appeals for the Fourth Circuit did rule that a sister local union could be enjoined in an alleged sympathy strike situation despite *Buffalo Forge* for the reasons that those employees 1) had the same employer, 2) were working at the same location, 3) in the same bargaining unit, 4) under the same contract, 5) had adopted sister local's cause as its own and 6) inferentially, could clearly benefit by a capitulation of its employer on the local dispute which had given rise to the work stoppage.

More importantly, in the same case, the Fourth Circuit refused to enjoin members of another local union employed by Southern Ohio Coal Company who had honored picket lines established by employees of Cedar Coal Company where the primary dispute arose. Following *Buffalo Forge*, that Court noted that those employees 1) had a different employer, 2) were in a different bargaining unit, 3) had no dispute arbitrable with Cedar Coal Company and 4) could not cause their employer. Southern Ohio Coal Company, to concede the issue causing the dispute at the Cedar Coal Local because there was no contract between Southern Ohio Coal Company and the Cedar Coal local. *Cedar Coal Company v. U.M.W.A.*, 560 F.2d 1154 (4th Cir. 1977), cert. den. 434 U.S.—(1978).

The other case cited by Petitioner as being "widely divergent" from *Buffalo Forge, Republic Steel Corp. v. U.M.W.A.*, 570 F. 2d 467 (1978), is likewise clearly distinguishable on

the facts. That case was an action for money damages, not for injunctive relief. In an action for money damages, the anti-injunctive provisions of the Norris-LaGuardia Act are not applicable (*United States Steel v. United Mine Workers of America*, 548 F. 2d 67 (3rd Cir. 1976). Moreover, the theory on which the Court of Appeals remanded that case was on the International Union's alleged failure to take reasonable efforts to halt the spread of unlawful picketing and was directed to the International Union only, not local or district organizations. Equally as important, Petitioner did not advance this theory in the District Court or Court of Appeals. As noted in the decision of the Seventh Circuit:

> Zeigler states that the local's right to honor stranger pickets is an issue subject to arbitration under the governing collective bargaining agreement, which provides for arbitration of "any local trouble of any kind arising at the mine." Accordingly, Zeigler reasons, by honoring the stranger pickets the locals were striking over an arbitrable issue and thus had violated the District Court's *Boys Market Injunction*." (Zeigler Coal Company v. Local Unions 1870 and 8682, United Mine Workers of America, Petitioner's Brief, Appendix A, Page 22)

Although *Buffalo Forge* has been cited with approval by numerous other courts, Petitioners have not cited and Respondents have not found any decisions on similar facts which are in conflict with the decision of the Seventh Circuit Court of Appeals or with the issue previously settled by this Court in *Buffalo Forge v. United Steel Workers*, supra.

It is important to confirm that *Buffalo Forge* as applied to this labor contract does not do violence to the long standing pro-arbitration policy which is central to federal labor law or to the arbitral process of this agreement. At most it checks the steady erosion of the anti-injunction policy expressed in the Norris-LaGuardia Act and applied by the Supreme Court

in *Sinclair Refining v. Atkinson*, 370 U.S. 195 (1962), until its decision in *Boys Markets v. Retail Clerks*, supra, in 1970. In that case the Court carved out a "narrow exception" to the anti-injunction policy of Norris LaGuardia in situations where a strike is precipitated by a dispute over which the striking local and the employer have agreed to arbitrate. The *Boys Markets* decision resulted from the desire of the Court to "accommodate" the strong federal policy against anti-strike injunctions and the equally vibrant federal policy favoring the vindication of the arbitral process. Although the *Boys Markets* Court took pains to note that it was not vitiating Norris-LaGuardia, some circuit courts have expanded that decision over the question of what constituted an "arbitrable dispute" for the purpose of entitlement to relief under Section 301 L.M.R.A. It was to resolve this conflict and confirm the "narrowness" of its holding in *Boys Markets* that the Supreme Court rendered its opinion in *Buffalo Forge* which instructs that federal courts must limit injunctions to cases in which a strike has been "precipitated by a dispute between union and management that was subject to binding arbitration under the provisions of the contract." *Buffalo Forge* at 405.

CONCLUSION

Since the issue on which this case was decided in the lower courts was clearly settled in ***Buffalo Forge v. United Steel Workers***, supra, and it is not in conflict with decisions of other Courts of Appeals on the same matter and under similar circumstances, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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